

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-03-KC-045
Cornell College	)	
	)	NAL/Acct. No. 200332560026
Licensee of Radio Station KRNL-FM	)	
Mt. Vernon, Iowa	)	FRN 0002590552
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 29, 2004****Released: August 2, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the proposed monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) issued to Cornell College (“Cornell”), the licensee of noncommercial educational FM Station KRNL, Mt. Vernon, Iowa. We find that Cornell failed to maintain control of the station’s transmitter in apparent willful and repeated violation of Section 73.1350(b)(2) of the Commission’s Rules (“*Rules*”) and failed to make available the station’s public file in apparent willful violation of Section 73.3527(c) of the Rules.<sup>1</sup> While we cancel the forfeiture based primarily upon the financial hardship that would result, we admonish Cornell for its violations of Sections 73.1350(b)(2) and 73.3527(c) of the Rules.

**II. BACKGROUND**

2. On March 18, 2003, an agent from the Commission’s Kansas City Office (“*Kansas City Office*”) conducted an inspection of Station KRNL-FM. The station’s transmitter site was not staffed and the only transmitter remote control function available was an on/off switch at the studio with no self-monitoring or automatic transmission system monitoring equipment to control the transmitter. Although the station operated twenty four hours per day, the studio was staffed only at night. The station’s contract engineer advised the station of its need for transmitter remote control equipment on November 13, 2002. No public inspection file was made available upon request during the inspection of the station, which occurred during regular business hours. In a response to a *Letter of Inquiry* dated May 1, 2003, Cornell stated that “[d]uring normal business hours, the station runs unattended.” Cornell also stated that it was purchasing a remote control unit and that it had assembled a complete public file.

2. On June 27, 2003, the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Cornell in the amount of thirteen thousand dollars (\$13,000).<sup>2</sup> Cornell filed a

<sup>1</sup>47 C.F.R. §§ 73.1350(b)(2) and 73.3527(c).

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560026 (Enf. Bur., Kansas City Office, released June 27, 2003).

response to the *NAL* on July 28, 2003, seeking a reduction or cancellation of the proposed forfeiture. Although it acknowledged that it did not maintain transmitter control equipment or a public file before the Commission's inspection, Cornell argues it quickly corrected the violations and adopted new procedures to prevent future violations. Cornell also asserts the forfeiture should be reduced or cancelled in light of its overall history of compliance with the Rules. Finally, Cornell states the forfeiture would constitute an extreme financial hardship, given the school's overall financial condition and the fact that the proposed forfeiture exceeds the station's annual budget for the 2003-2004 school year.

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Cornell's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

4. Section 73.1350(b)(2) of the Rules states that the transmitter control personnel of broadcast station licensees must have the capability to turn the transmitter off at all times.<sup>6</sup> If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can deactivate the transmitter within three minutes. Section 73.3527(c) requires every licensee of noncommercial educational broadcast stations to make available upon request the station's public file during regular business hours.<sup>7</sup> Cornell does not dispute that it did not comply with the Commission's transmitter control or public file rules prior to the Commission's inspection. We find that Cornell's violation of Section 73.1350(b)(2) of the Rules was willful<sup>8</sup> and repeated<sup>9</sup> and that its violation of Section 73.3527(c) of the Rules was willful.

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<sup>3</sup>47 U.S.C. § 503(b).

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

<sup>6</sup>47 C.F.R. § 73.1350(b)(2).

<sup>7</sup>47 C.F.R. § 73.3527(c).

<sup>8</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup>As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

5. Cornell asserts the forfeiture should be cancelled or reduced in light of its overall history of compliance with the Rules and its financial situation. We agree. Prior to the *NAL*, Cornell had not received a single notice of violation from the Commission. Moreover, after reviewing the financial information provided by Cornell, we conclude that a \$13,000 forfeiture would pose a financial hardship to the station. Accordingly, we cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Cornell for its willful and repeated violation of 73.1350(b)(2) of the Rules and its willful violation of Section 73.3527(c) of the Rules.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>10</sup> the forfeiture in the amount of thirteen thousand dollars (\$13,000) proposed in the June 27, 2003 *Notice of Apparent Liability* issued to Cornell College **IS CANCELLED**.

7. **IT IS FURTHER ORDERED** that Cornell College **IS ADMONISHED** for failure to maintain transmitter control and failure to make available the station's public file in willful and repeated violation of Section 73.1350(b)(2) of the Commission's Rules and in willful violation of Section 73.3527(c) of the Commission's Rules.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Dee Ann Rexroat, Director of College Communications, 810 Commons Circle, Mt. Vernon, Iowa 52314.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>10</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).